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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/748,791	12/26/2000	Par Lindh	279.352US1	3323

21186 7590 08/28/2002

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EXAMINER

KHAN, OMAR A

ART UNIT	PAPER NUMBER
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3762

DATE MAILED: 08/28/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

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## Office Action Summary

Application No.

09/748,791

Applicant(s)

LINDH ET AL.

Examiner

Omar A Khan

Art Unit

3762

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 26 December 2000.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-29 is/are pending in the application.
- 4a) Of the above claim(s) 7-12 and 21-29 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 13-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 26 December 2000 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)  
3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 3. 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

*Election/Restrictions*

1. This application contains claims directed to the following patentably distinct species of the claimed invention: Embodiments 1-3, represented by Figures 4-6, respectively.

Applicant is required under 35 U.S.C. 121 to elect a single disclosed species for prosecution on the merits to which the claims shall be restricted if no generic claim is finally held to be allowable. Currently, Claim 1 is generic.

Applicant is advised that a reply to this requirement must include an identification of the species that is elected consonant with this requirement, and a listing of all claims readable thereon, including any claims subsequently added. An argument that a claim is allowable or that all claims are generic is considered nonresponsive unless accompanied by an election.

Upon the allowance of a generic claim, applicant will be entitled to consideration of claims to additional species which are written in dependent form or otherwise include all the limitations of an allowed generic claim as provided by 37 CFR 1.141. If claims are added after the election, applicant must indicate which are readable upon the elected species. MPEP § 809.02(a).

Should applicant traverse on the ground that the species are not patentably distinct, applicant should submit evidence or identify such evidence now of record showing the species to be obvious variants or clearly admit on the record that this is the case. In either instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention.

During a telephone conversation with Timothy Bianchi on 8/20/2002 a provisional election was made without traverse to prosecute the invention of Embodiment 1, claims 2-6, and 15-20. Affirmation of this election must be made by applicant in replying to this Office action. Claims 7-12 and 21-29 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to non-elected inventions.

*Claim Rejections - 35 USC § 112*

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

2. Claims 1-6 and 15-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 is vague and indefinite for citing the limitation "pulse generator setting" as the claim is incomplete for omitting a pulse generating method step.

Claim 15 is vague and indefinite for citing the limitation "a first data value" and "one or more algorithms" are inferentially included and not positively recited in the claims. Further, the claim is incomplete for omitting a structural connection or relationship between the control circuitry and the data input. Finally, the use of "where" is vague and indefinite as the scope of the claimed invention is unclear. Examiner suggests the use of -wherein-.

Claim 17 is vague and indefinite for citing the limitation "intrinsic intracardia electrograms" as the claim is incomplete for omitting an element to record the electrograms.

*Claim Rejections - 35 USC § 102*

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in-

(1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effect under this subsection of a national application published under section 122(b) only if the international application designating the United States was published under Article 21(2)(a) of such treaty in the English language; or  
(2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that a patent shall not be deemed filed in the United States for the purposes of this subsection based on the filing of an international application filed under the treaty defined in section 351(a).

3. Claims 1-3 and 14-16 rejected under 35 U.S.C. 102(e) as being clearly anticipated by Taylor et al (US Patent No 6,304,773).

*Claim Rejections - 35 USC § 103*

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 1-3 and 14-16 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cohen (US Patent No 5,174,289). Cohen discloses all of the claimed limitations but does not explicitly speak to a programmer displaying the one or more pulse generator settings and performing the algorithms for pulse generator settings. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the pacing system and method of Cohen to include a programmer that allowed for displaying the one or more pulse generator settings and performing the algorithms for pulse generator settings since it was well

known in the art to use a programmer to provide the medical practitioner or caregiver with increased control and feedback of the patient's status and pulse generator settings for timely reaction in case of pacer error or emergency and maintenance of accurate patient files.

5. Claims 4-6 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cohen (US Patent No 5,174,289) in view of Struble (US Patent No 6,070,101).

Cohen discloses all of the claimed limitations but does not speak explicitly to measuring the difference between left and right ventricular contractions. Struble teaches a multiple channel cardiac pacing system having a pacing algorithm using the difference between left and right ventricular contractions for providing an indication of the presence of right or left bundle branch block. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the pacing system and method of Cohen to include measuring the difference between left and right ventricular contractions, as taught by Struble for providing a secondary indication of a treatable arrhythmia (such as right or left bundle branch block) and providing assurance of the presence of such an arrhythmia before initiating a potentially uncomfortable, unnecessary, and even damaging pacing regimen.

6. Claim 13 is rejected under 35 U.S.C. 103(a) as being unpatentable over Cohen (or Taylor). Cohen (or Taylor) discloses all of the claimed limitations but does not explicitly speak to receiving a request to display one or more pulse generator settings and displaying an estimated time to complete executing the algorithm. It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the pacing system and method of Cohen (or Taylor) to include receiving a request to display one or more pulse generator settings and displaying an estimated time to complete executing the algorithm since it was well known in the

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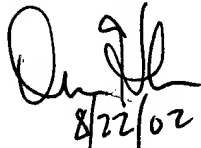
art to use a programmer to interface with the caregiver or medical practitioner and display or provide the caregiver or medical practitioner the data being analyzed, algorithm output, or estimated algorithm execution time to provide for a comprehensive review of the pulse generator in case of errors or an emergency and also allow the medical practitioner to document the pulse generator settings and patient status in the patient files.

### *Conclusion*


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Omar A Khan whose telephone number is (703) 308-0959. The examiner can normally be reached on M-F 9AM-6PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on (703) 308-5181. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-3590 for regular communications and (703) 305-3590 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-0873.



Omar A Khan  
August 22, 2002



GEORGE R. EVANISKO  
PRIMARY EXAMINER  
8/23/2